

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Julie Diaz

(b) County of Residence of First Listed Plaintiff Northampton  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

T. Hane C. Berber, Esquire  
Harduck Collier, LLC 179 N. Broad St. Doylestown

## DEFENDANTS

Sawcon Valley Manor, Inc. and  
Nimita KapooratyehCounty of Residence of First Listed Defendant Lehigh  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY - Med. Malpractice</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISON PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 U.S.C. § 12101

Brief description of cause:

disability discrimination

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

IN EXCESS OF \$150,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1-26-12

SIGNATURE OF ATTORNEY OF RECORD

T. Hane C. Berber

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 49 E. Savcon St., Hellertown, Pa. 18055

Address of Defendant: 1177 6th St., Whitehall, Pa. 18052

Place of Accident, Incident or Transaction: Pennsylvania  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes ☐ No ☒

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes ☐ No ☒

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FEELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

### ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Tiffanie C. Benfer, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 1-26-12

Tiffanie C. Benfer  
Attorney-at-Law

202096  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1-26-12

Tiffanie C. Benfer  
Attorney-at-Law

202096  
Attorney I.D.#

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 49 E. Saucon St., Hellertown Pa. 18055

Address of Defendant: 1177 6th St., Whitehall, Pa. 18052

Place of Accident, Incident or Transaction: Pennsylvania  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

#### ARBITRATION CERTIFICATION

(Check Appropriate Category)

- I, Tiffanie C. Bender, counsel of record do hereby certify:
- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 1-26-12

Tiffanie C. Bender  
Attorney-at-Law

202096  
Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 1-26-12

Tiffanie C. Bender  
Attorney-at-Law

202096  
Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

Julie Diaz : CIVIL ACTION  
:  
:  
Sancon Valley Manor, Inc. :  
and Nimita Kapooratiyeh : NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (✓)

<u>1-26-12</u>	<u>Jaffa C. Berfer</u>	<u>Plaintiff</u>
Date	Attorney-at-law	Attorney for
<u>215-230-1912</u>	<u>215-230-1913</u>	<u>hberfer@hardwickecollier.com</u>
Telephone	FAX Number	E-Mail Address <u>hfrey@hardwickecollier.com</u>

(Civ. 660) 10/02

United States District Court  
Eastern District Of Pennsylvania  
United States Courthouse  
Independence Mall West  
601 Market Street  
Philadelphia, PA 19106-1797

*Chambers of  
James T. Giles  
Chief Judge*

*Michael E. Kunz  
Clerk of Court*

*Clerk's Office  
Room 2609  
Telephone  
(215)597-7704*

NOTICE OF RIGHT TO CONSENT TO EXERCISE OF JURISDICTION  
BY A UNITED STATES MAGISTRATE JUDGE

The district judges of this Court have found that the United States magistrate judges are experienced judicial officers who have regularly handled the disposition of hundreds of civil cases through motions and trials and are fully qualified to try any civil cases arising before this Court.

In accordance with the provisions of 28 U.S.C. §636(c), you are hereby notified that pursuant to Local Rules 72.1(h), the United States magistrate judges of this district, in addition to their other duties, may, upon the consent of all the parties in a civil case, conduct any or all proceedings in a civil case, including a jury or non-jury trial, and order the entry of a final judgement. Appropriate consent forms for this purpose are available from the clerk of court.

Your decision to consent, or not to consent, to the referral of your case to a United States magistrate judge for disposition is entirely voluntary and should be communicated solely to the clerk of the district court. Only if all the parties in the case consent to the reference to a magistrate judge will either the judge or magistrate judge be informed of your decision. **If you decide to consent, your case will receive a date certain for trial.**

No action eligible for arbitration will be referred by consent of the parties until the arbitration has been concluded and trial *de novo* demanded pursuant to Local Rules 53.2, Paragraph 7. The Court may, for good cause shown, or on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge.

When a case is referred to a magistrate judge for all further proceedings, including the entry of final judgement, the final judgement shall be appealed directly to the Court of Appeals for the Third Circuit in the same manner as an appeal from any other judgement of a district court.

Nothing herein shall be construed to be a limitation of any party's right to seek review by the Supreme Court of the United States.

JAMES T. GILES  
CHIEF JUDGE

MICHAEL E. KUNZ  
CLERK OF COURT

**HARDWICK COLLIER, LLC**

**BY: VIRGINIA HARDWICK, ESQ. (Attorney I.D. No. 202649)**

**TIFFANIE C. BENFER, ESQ. (Attorney I.D. No. 202096)**

179 North Broad Street

Doylestown, PA. 18901

Attorneys for Plaintiff

---

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

---

**JULIE DIAZ**

49 E. Saucon Street,  
Hellertown, PA 18055

Plaintiff,

v.

**SAUCON VALLEY MANOR, INC.**

1177 6<sup>th</sup> Street  
Whitehall, PA 18052

and

**NIMITA KAPOORATIYEH**

**A/K/A NEMITA ATIYEH**

**A/K/A NEMO AIYAH**

1177 6<sup>th</sup> Street  
Whitehall, PA 18052

Defendants.

---

No. \_\_\_\_\_

Jury Trial Demanded

**COMPLAINT**

**I. INTRODUCTION**

1. This action for equitable, monetary, and other relief is brought by Plaintiff, Julie Diaz, to redress intentional violations by Defendants, Saucon Valley Manor, Inc. and Nimita Kappooratiyeh, a/k/a Nemita Atiyeh, and a/k/a Nemo Aiyah, of rights secured by the laws of the United States and the statutory and common law of the Commonwealth of Pennsylvania.

## **II. JURISDICTION**

2. This action is brought pursuant to the Americans with Disabilities Act of 1990 (ADA) and the Americans with Disabilities Amendments Act (ADAAA), 42 U.S.C. §§ 12101, et seq.; the Family Medical Leave Act (FMLA), 29 U.S.C. § 1601, et seq.; to 28 U.S.C. §1331; the Pennsylvania Human Relations Act (PHRA), 42 P.S. §951, et seq., as amended, 1991; and § 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794.

3. Plaintiff, Julie Diaz, has exhausted federal and state administrative remedies. Plaintiff filed her charge with the Equal Employment Opportunity Commission (“EEOC”), Charge No. 530-2011-00649, on or around October 21, 2010, and it was dual filed with the Pennsylvania Human Rights Commission (“PHRC”), Complaint No. 201005436. On November 4, 2011, the EEOC issued a Right-to-Sue letter. This suit is timely filed.

4. State law claims asserted under the PHRA and Pennsylvania common law are before this Honorable Court pursuant to 28 U.S.C. §1367, supplemental jurisdiction.

## **III. VENUE**

5. All actions complained of herein took place within the jurisdiction of the United States District Court for the Eastern District of Pennsylvania as the place in which the claims arose, and the place where Saucon Valley Manor, Inc. conducts business.

6. Venue is accordingly invoked pursuant to the dictates of 28 U.S.C. §1391(b) and 42 U.S.C. §2000e-5(f)(3).

## **IV. PARTIES**

7. Plaintiff, Julie Diaz (hereinafter “Plaintiff or “Ms. Diaz”) is an adult female who currently resides at 49 E. Saucon Street, Hellertown, Pennsylvania 18055.



8. Defendant Saucon Valley Manor, Inc. (hereinafter “Saucon Valley”) is a corporation of the Commonwealth of Pennsylvania with a principal place of business at 1177 6<sup>th</sup> Street, Whitehall, Pennsylvania 18052, and is an employer within the meaning of the applicable legislation cited herein.

9. Saucon Valley Manor, Inc. receives Medicare and is therefore a recipient of federal funding under the Rehabilitation Act of 1973, 29 U.S.C.A. § 794.

10. Defendant Nemita Kapooratiyeh, a/k/a Nemita Atiyeh, and a/k/a Nemo Aiyah, is the President of Saucon Valley Manor, Inc., 1177 6<sup>th</sup> Street, Whitehall, Pennsylvania 18052.

## **V. FACTUAL BACKGROUND**

11. In December 2007, Ms. Diaz was employed by Saucon Valley as a cook at its facility located at 105 Main Street, Hellertown PA 18005.

12. From 2007 through 2010, Ms. Diaz never received a negative performance evaluation.

13. From 2007 through 2010, Ms. Diaz had no problem with attendance or tardiness.

14. Plaintiff’s direct supervisor was Cindy Fox, the Dietary Manager.

15. In March 2009, Ms. Diaz was allegedly “randomly tested” for alcohol at work, and the test came back positive. Ms. Diaz was sent home and received a verbal written warning.

16. On March 1, 2010, Ms. Diaz’s father died.

17. On March 2, 2010, Ms. Diaz went to work despite being distraught over the devastating news of her father’s death.



18. Ms. Fox sent Ms. Diaz home shortly after Ms. Diaz arrived at work on March 2nd.

19. After she arrived at home on March 2, 2010, Ms. Diaz received a call from Melissa Stroble, a supervisor. Ms. Stroble informed Ms. Diaz that she was fired for being intoxicated at work.

20. Ms. Diaz informed Ms. Stroble she had not been drinking and that her father had died the day before.

21. Ms. Stroble offered Ms. Diaz the opportunity to be tested for alcohol. Ms. Diaz agreed to be tested.

22. Within minutes of Ms. Diaz's telephone conversation with Ms. Stroble, a Saucon Valley employee arrived at Ms. Diaz's house and drove her to Bethlehem Medical Center for a U.S. DOT Breath Alcohol Test.

23. The test results were "negative".

24. On information and belief, Ms. Diaz's negative test results were passed onto the Defendant almost immediately.

25. On the afternoon of March 2, 2010, Ms. Diaz contacted Ms. Stroble because no one from Saucon Valley had contacted her. Ms. Diaz informed Ms. Stroble that she had passed the test. Ms. Stroble indicated that she already knew the results.

26. Ms. Stroble instructed Ms. Diaz to contact Nemita Atiyeh, the President of Saucon Valley, to discuss the status of her job.

27. On March 2, 2010, Ms. Diaz contacted Ms. Atiyeh directly and informed her that her father had passed away the day before. Ms. Atiyeh told Ms. Diaz that she could have her job back.

28. Ms. Diaz met with Carolyn (LNU) in Human Resources to drop off her father's obituary in order to get paid for grievance time off. At this meeting, Carolyn (LNU) presented Ms. Diaz with a document. Carolyn (LNU) informed Ms. Diaz that Ms. Atiyeh insisted that Ms. Diaz had to sign the document in order to keep her job.

29. On June 10, 2010, Ms. Diaz received her yearly evaluation. She received excellent in all seven categories and her overall performance was rated excellent. Ms. Diaz was also praised for taking charge in Ms. Fox's absence while Ms. Fox was out on a medical leave of absence for surgery.

30. In June 2010, Ms. Diaz informed Ms. Fox that she would need to take medical leave in July 2010 in order to receive treatment at an in-patient treatment center of alcoholism.

31. Ms. Fox informed Ms. Diaz that this would not be a problem and her job would be there when she returned.

32. Ms. Diaz asked Ms. Stroble and Ms. Fox for the documents necessary to take a leave of absence.

33. Ms. Stroble and Ms. Fox told Ms. Diaz not to worry about the paperwork because Ms. Diaz did not know the exact date when she would begin her leave of absence.

34. Ms. Diaz suffers from alcoholism that substantially limits her major life activities. By way of example, it eventually severely impacted her ability to sleep and eat over an extended period of time.

35. On July 23, 2010, Ms. Diaz entered Keystone Center, an in-patient treatment rehabilitation facility (hereinafter "facility").

36. On information and belief, Ms. Atiyeh instructed Ms. Fox to request documentation from the treatment center that reflected the date Ms. Diaz entered the program and the date she was to be released.

37. In response, the treatment center faxed a letter dated July 23, 2010 to the Defendant, Saucon Valley Manor, Attn: Neno, that stated, "Julie Diaz was admitted to the Intensive Inpatient Program at Keystone Center on July 23, 2010 and she is scheduled to be discharged on August 23, 2010."

38. On three separate occasions, Ms. Fox spoke with Ms. Diaz while she was staying at the treatment center.

39. The third conversation between Ms. Fox and Ms. Diaz took place on or about Thursday, August 19, 2010, while Ms. Diaz was still at the treatment center. Ms. Fox informed Ms. Diaz that Ms. Atiyeh had terminated her employment.

40. Ms. Fox informed Ms. Diaz that she was terminated because she took a leave of absence to receive treatment at an inpatient treatment facility.

41. At the time Ms. Diaz was terminated, she had been out of work on FMLA leave for 30 days.

42. Ms. Diaz has a disability as defined by the ADAAA Act, and as defined by the PHRA.

43. Ms. Diaz is a qualified person with a disability in that she had a substantial impairment of the major life activities of sleeping and eating.

44. Ms. Diaz was a qualified person with a disability in that she could perform the essential functions of her job with a reasonable accommodation, a leave of absence for less than 30 days in order to attend an inpatient treatment program.

45. Ms. Diaz's request for leave of absence in order to attend inpatient treatment for alcoholism was a reasonable accommodation.

46. Ms. Diaz had a history of impairment of a major life activity and/or was regarded by Defendants as having such impairment.

47. Defendants terminated Ms. Diaz's employment because of her disability or because the Defendants regarded her as disabled. Plaintiff was informed that she was being terminated for seeking treatment for alcoholism.

48. Saucon Valley terminated Ms. Diaz's employment in retaliation for exercising her rights under FMLA. Ms. Diaz was terminated while out on FMLA leave.

49. As a direct and proximate result of the unlawful employment practices of Saucon Valley, Ms. Diaz has suffered damages including but not limited to lost income, lost benefits, emotional distress, and loss of enjoyment of life.

### **COUNT I**

#### **PLAINTIFF'S CLAIMS UNDER THE AMERICANS WITH DISABILITIES ACT**

**42 U.S.C. § 12101, et seq.**

#### **AGAINST DEFENDANT SAUCON VALLEY**

50. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

51. At all times material hereto, Plaintiff is, and was a qualified individual with a "disability" within the meaning of the ADA, as amended by the ADA-AAA, as defined at 42 U.S.C. § 12102(2), 29 C.F.R. § 1630.2(g), in that she has a physical or mental impairment that limits one or more of her major life activities, has a record of such impairments, and/or is perceived and regarded by Defendants as having such an

impairment. Plaintiff is substantially limited in the major life activities of eating and sleeping.

52. Mr. Diaz was wholly qualified to perform her former position with the Defendant, Saucon Valley. Ms. Diaz performed her job without receiving any negative feedback for three years prior to the events addressed in this complaint.

53. To date, no questions as to Mr. Diaz's qualifications or performance have surfaced.

54. Ms. Diaz was subject to adverse employment action, termination, as a result of her disability.

55. Defendant's deliberate discrimination and harassment of Plaintiff including but not limited to terminating her employment because of her disability, her record of disability and/or her perceived disability is unlawful discrimination and is in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, et. seq. This conduct has caused Plaintiff to suffer emotional distress, mental anguish, monetary loss, wage loss, loss of self-esteem, personal humiliation, and loss of enjoyment of life.

**WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendant, Saucon Valley for compensatory and punitive damages in an amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this action, reimbursement of back pay with interest, front pay, attorneys fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

**COUNT II**

**PLAINTIFF'S CLAIMS UNDER THE PENNSYLVANIA HUMAN  
RELATIONS ACT (43 P.S. §951, et seq.)  
AGAINST DEFENDANT SAUCON VALLEY**

**Disability Discrimination**

56. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

57. Pennsylvania's Human Relations Act, 43 P.S. §951, et seq, provides for compensatory damages in appropriate cases of violation of the Act's prohibition of discrimination based on a disability.

58. Defendant's deliberate discrimination of Plaintiff through termination of her employment because of her disability, her record of disability and/or her perceived disability is unlawful discrimination and is in violation of the Pennsylvania Human Relations Act, 43 P.S. § 951 et seq. This conduct has caused Plaintiff to suffer emotional distress, mental anguish, monetary loss, wage loss, loss of self-esteem, personal humiliation, and loss of enjoyment of life.

59. The egregious nature of Defendant's illegal misconduct and the extent of Plaintiff's financial, physical, and emotional injuries and damages justify a recovery of monetary damages for the value of Plaintiff's claims, and the facts and circumstances of this case entitle Plaintiff to additional damages under state law.

**WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendant, Saucon Valley for compensatory and punitive damages in an amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this

action, reimbursement of back pay with interest, front pay, attorney's fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

**COUNT III**

**PLAINTIFF'S CLAIMS UNDER THE AMERICANS WITH DISABILITIES ACT  
42 U.S.C. § 12101, et seq.  
AGAINST DEFENDANTS SAUCON VALLEY**

**Failure to Accommodate and Retaliation for Requesting an Accommodation**

60. Plaintiff incorporates by reference herein the preceding paragraphs of this complaint.

61. At all times material hereto, Plaintiff was a qualified individual with a "disability" within the meaning of the ADA, as amended by the ADAA, as defined at 42 U.S.C. § 12102(2), 29 C.F.R. § 1630.2(g), in that she has a physical impairment that limits one or more of her major life activities, and that she was capable of performing the essential functions of her job with a reasonable accommodation.

62. Plaintiff advised Defendant of her need for a reasonable accommodation in the form of a leave of absence for 30 days in order to attend an impatient treatment program.

63. Defendant failed to engage in an interactive process with Plaintiff and failed to provide a reasonable accommodation.

64. Defendant terminated Ms. Diaz while she was receiving in patient treatment for her disability.

**WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendant, Saucon Valley, for compensatory and punitive damages in an



amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this action, reimbursement of back pay with interest, front pay, attorney's fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

**COUNT IV**

**PLAINTIFF'S CLAIMS UNDER THE PENNSYLVANIA HUMAN  
RELATIONS ACT (43 P.S. §951, et seq.)  
AGAINST DEFENDANT SAUCON VALLEY**

**Failure to Accommodate and Retaliation for Requesting an Accommodation**

65. Plaintiff incorporates by reference herein the preceding paragraphs of this complaint.

66. At all times material hereto, Plaintiff was a qualified individual with a "disability" within the meaning of the Pennsylvania Human Relations Act, in that she has a physical impairment that limits one or more of her major life activities, and that she was capable of performing the essential functions of her job with a reasonable accommodation.

67. Plaintiff advised Defendants of her need for a reasonable accommodation in the form of a leave of absence for 30 days in order to attend an impatient treatment program.

68. Defendants failed to engage in an interactive process with Plaintiff and failed to provide a reasonable accommodation.

69. Defendant terminated Ms. Diaz while she was receiving in patient treatment for her disability.

**WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendant, Saucon Valley for compensatory and punitive damages in an

amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this action, reimbursement of back pay with interest, front pay, attorney's fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

**COUNT V**

**PLAINTIFF'S CLAIMS UNDER THE FAMILY AND MEDICAL LEAVE ACT  
OF 1993, 29 U.S.C. § 2601 et seq.  
AGAINST ALL DEFENDANTS**

70. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

71. The Family Medical Leave Act 29 U.S.C. § 2615(a)(2) ("FMLA") makes it unlawful for an employer to interfere with an employee's right to take a leave of absence under the FMLA.

72. On information and belief, Defendants' actions in terminating Ms. Diaz less than 30 days after she went on FMLA leave was intended to interfere with Ms. Diaz's right to take the leave.

73. The Family Medical Leave Act 29 U.S.C. § 2615(a)(2) ("FMLA") makes it unlawful for an employer to retaliate against an employee because the employee has taken or sought a leave under FMLA.

74. Ms. Diaz was subjected to adverse action in that her employment was terminated because she took a leave of absence to which she was entitled under FMLA.

75. Defendant, Ms. Atiyeh, as President of Saucon Valley, acted in the interest of her employer Saucon Valley with regard to the actions she took concerning Ms. Diaz. Ms. Atiyeh was in whole or in part responsible for the decision to terminate Ms. Diaz and

for the notification of Plaintiff's termination in violation of the Family Medical Leave Act, 29 U.S.C. § 2601, et seq.

76. Defendants' deliberate retaliation and interference is a violation of the Family Medical Leave Act, 29 U.S.C. § 2601, et seq. This conduct has caused Plaintiff to suffer emotional distress, mental anguish, monetary loss, wage loss, loss of self-esteem, personal humiliation, and loss of enjoyment of life.

77. **WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendants, in their joint and several capacities, for compensatory and punitive damages in an amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this action, reimbursement of back pay with interest, front pay, attorneys fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

#### **COUNT VI**

#### **PLAINTIFF'S CLAIMS UNDER § 504 OF THE REHABILITATION ACT OF 1973, 29 U.S.C.A. § 794 AGAINST ALL DEFENDANTS**

78. Plaintiff incorporates by reference the preceding paragraphs of this Complaint.

79. Ms. Diaz is an individual with a disability within the meaning of the Rehabilitation Act of 1973, 29 U.S.C.A. § 705(20), in that her alcoholism is an impairment, which substantially limits one or more of her major life activities.

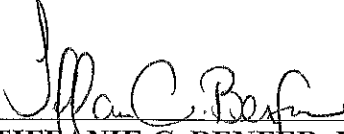
80. As of June 2010, the plaintiff was a qualified person within the meaning of § 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794, in that she could perform the essential functions of her position as a cook despite the disability.

81. By failing to accommodate Plaintiff's disability, the defendant, under color of law, violated § 504.

82. In failing to accommodate Plaintiff's disability, Defendant acted with malice.

83. **WHEREFORE**, Plaintiff, Julie Diaz, respectfully requests judgment in her favor and against Defendants, in their joint and several capacities, for compensatory and punitive damages in an amount exceeding One Hundred Fifty Thousand (\$150,000) Dollars, plus costs of this action, reimbursement of back pay with interest, front pay, attorneys fees, and such other relief as the Court may deem just, proper, and appropriate in the circumstances of this case.

**HARDWICK COLLIER, LLC**

BY:   
**TIFFANIE C. BENFER, ESQUIRE**  
Attorneys for Plaintiff

Dated: January 26, 2012